

AN ORDINANCE

BY COUNCILMEMBER CLAIR MULLER

AS SUBSTITUTED BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 74 ENTITLED "RIPARIAN BUFFER REQUIREMENTS"; TO OFFICIALLY CHANGE THE ADMINISTERING DEPARTMENT TO WATERSHED MANAGEMENT, TO STREAMLINE THE REVIEW PROCESS AND CLARIFY THE PUBLIC NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

WHEREAS, in May 2001 the Atlanta City Council approved the Riparian Buffer Ordinance in an effort to protect water quality and fulfill the requirements of the Metropolitan River Protection Act; and

WHEREAS, in December 2001, the Atlanta City Council amended the ordinance to provide variance procedures to the stream bank buffer requirements; and

WHEREAS, in 2002 the Department of Watershed Management took over administration of the ordinance however, the ordinance still refers to the Department of Public Works as the administering agency; and

WHEREAS, based upon the last seven years of administering the Riparian Buffer Ordinance, it has become apparent that it is in the best interests of the City of Atlanta (City) to provide for a more efficient, transparent, clear, and objective variance process; and

WHEREAS, it is in the best interests of the City to provide for easily applicable definitions of streams that are consistent with State law; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District's ("District's") Model Stream Buffer Protection Ordinance (2003) or equally effective stream buffer protection ordinance; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the source water protection requirements of the District's Watershed Protection Plan,

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: That Atlanta City Code § 74-300 entitled “Citation” is hereby amended to read as follows:

This article may be cited as the “City of Atlanta Stream Buffer Protection Ordinance.”

SECTION 2: That Atlanta City Code § 74-301 entitled “Purpose and Intent” is hereby amended to read as follows:

Sec. 74-301. Findings and Purposes.

The City of Atlanta finds that buffers adjacent to streams provide numerous benefits including the following:

- (1) Protecting, restoring, and maintaining the chemical, physical and biological integrity of streams and their water resources;
- (2) Cleansing surface water, urban stormwater runoff, and groundwater by filtering pollutants, nutrients, sediment, and other contaminants;
- (3) Reducing erosion and controlling sedimentation;
- (4) Protecting and stabilizing stream banks and stream channels;
- (5) Maintaining base flow of streams by aiding in groundwater recharge thereby reducing dry weather low flows in streams;
- (6) Contributing organic matter that is a source of food, energy, and habitat for the aquatic ecosystem;
- (7) Providing tree canopy to shade streams and promote desirable aquatic habitat including but not limited to the moderation of water temperature in streams;
- (8) Providing and protecting riparian wildlife habitat and wildlife migration corridors;
- (9) Furnishing scenic value and education and recreational opportunity; and
- (10) Providing opportunities for the protection and restoration of greenspace; and
- (11) Providing an efficient, transparent, objective, and clear administrative processes.

Therefore, the City finds that the protection of the streams and rivers and the areas adjacent to them is vital to the health, safety and welfare of its citizens. The purpose of this article is to protect the public health, safety and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream

water quality by provisions designed to create buffer areas along the streams of the City for the protection of water resources and to minimize land development within such buffers by establishing buffer area requirements and by requiring authorization for any such activities; and to offer additional protection for buffer areas along the streams of the City beyond the twenty-five foot wide buffer areas mandated by the State of Georgia.

This article shall apply to both public and private property within the City. This article shall be administered in its entirety by the Department of Watershed Management unless otherwise specified herein.

SECTION 3: That Atlanta City Code § 74-302 entitled “Definitions” is hereby amended to read as follows:

Sec. 74-302. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Applicant* for the purpose of this article, means the person who applies for an administrative encroachment to a stream bank buffer and who must be the owner of the real property containing the buffer or an authorized agent of the owner.
- (2) *Best management practices (BMPs)* means a collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control for all rainfall events up to and including a 25-year, 24-hour rainfall event or as otherwise defined in Atlanta City Code (Article II, Chapter 74).
- (3) *Buffer* for purposes of this article, shall mean a natural or enhanced vegetative area established by Atlanta City Code § 74-303 lying adjacent to a stream.
- (4) *City* means City of Atlanta.
- (5) *Commissioner* means the commissioner of the Department of Watershed Management or a designee.
- (6) *Department* means the Department of Watershed Management or its successor agency.
- (7) *Direct run-off* means water entering stream channels immediately after rainfalls or snow melts.
- (8) *EPD* means the Environmental Protection Division of the State of Georgia Department of Natural Resources.
- (9) *Impervious cover or Impervious surface* means any paved, hardened, or structural surface, regardless of material. Impervious cover or Impervious surface includes

but is not limited to buildings, rooftops, driveways, streets, roads, parking lots, swimming pools, dams, tennis courts, decks, any concrete or asphalt and any other structures that meet the above definition.

- (10) *Jurisdictional wetland* means a wetland area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.
- (11) *Normal stream flow* means any stream flow that consists of base flow during any period of the year under normal conditions. Base flow results from groundwater that enters the stream channel through sub-surface flow and includes spring flows into streams. Base flow does not include Direct run-off.
- (12) *On-Site Sewage Management System* shall have the same meaning as that term is defined by Georgia law and regulation and said meaning is hereby incorporated by reference as if fully set out herein.
- (13) *Stream* means any watercourse that sustains normal stream flow during any period of the year under normal climatic conditions.
- (14) *Stream bank* means the sloping lands that contain the stream channel and the normal flows of the stream. It is usually but not always identified as the point where the normal stream flow has wrested the vegetation.
- (15) *Stream Channel* means the portion of a watercourse in a well-defined channel that contains the base flow of the stream.
- (16) *Technical Panel* is a panel comprised of at least two staff professionals from the Department of Watershed Management, who are designated by the Commissioner, and certified by the Georgia Soil and Water Conservation Commission pursuant to O.C.G.A. § 12-7-19 in the field of pollution, erosion and sediment control at the designer reviewer level. The Technical Panel shall also include at least one person who holds a current and valid license to practice landscape architecture from the Georgia Board of Landscape Architects pursuant to O.C.G.A. § 43-23-1 *et seq.* The Technical Panel shall hold periodic meetings and shall develop procedures for same. The Technical Panel shall also make final determinations and maintain the public record concerning the granting, granting with conditions or denying applications administrative encroachments to stream bank buffers.
- (17) *Waters of the state* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation or as defined by O.C.G.A. § 12-7-3 (16).
- (18) *Well* means an excavation or opening into the ground from which groundwater is sought or obtained.

- (19) *Wetland delineation* means the establishment of wetland boundaries by a representative of the U.S. Army Corps of Engineers or an authority designated by the Corps.
- (20) *Wrested vegetation* means movement of water that removes soil, debris and vegetation, creating a clear demarcation between water flow and vegetative growth.

SECTION 4: That Atlanta City Code § 74-303 entitled “Application of riparian buffers” is hereby amended to read as follows:

Sec. 74-303. Application of stream buffers

All land development activity subject to this article shall meet the following requirements:

- (a) A natural vegetative buffer shall be maintained for seventy-five (75) feet, measured horizontally from the stream bank as measured from the point of wrested vegetation, with the requirement for expansion of the seventy-five (75) foot buffer depending on the presence of jurisdictional wetlands. If wrested vegetation is not present due to a man-made modification, removal or replacement with a structure, the buffer shall be measured from the top of the structure or point of modification or removal.
- (b) Waters of the state not otherwise covered by this article shall have buffers as required by state law.
- (c) Jurisdictional wetlands, lying in part or in whole within the boundary of any required stream buffer, shall remain in their natural state and shall have a seventy-five foot (75) buffer such that the stream buffer shall include the extent of the jurisdictional wetland plus its seventy-five foot (75) buffer. The applicant for a land development permit shall be responsible for providing any necessary information regarding wetland delineation.

SECTION 5: That Atlanta City Code § 74-304 entitled “Relationship to erosion and sedimentation requirements” is hereby amended to read as follows:

Sec. 74-304. Relationship to erosion and sedimentation requirements.

During any permitted construction activity, erosion and sedimentation control best management practices as set forth in Article II of this Chapter 74 shall be implemented to prevent the migration of any sediment into a stream buffer, if such practices are not already required by other ordinances.

During any permitted construction activity, erosion and sedimentation control best management practices as set forth in Article II of this Chapter 74 shall be implemented to

prevent the migration of any sediment into any jurisdictional wetlands, and waters of the state.

SECTION 6: That Atlanta City Code § 74-305 entitled “Exemptions” is hereby amended to read as follows:

Sec. 74-305. Exemptions.

- (a) The following land uses or activities are exempted from those requirements of this article which are more protective of the buffers than required by state or federal law:
 - (1) Construction, operation or maintenance of a municipal or county street or state route within a City, County, or Georgia Department of Transportation right-of-way or easement, or construction, operation or maintenance of a City of Atlanta utility within a City of Atlanta utility right-of-way or easement;
 - (2) Municipal, county, or state roadway drainage structures, stormwater outlets, and associated best management practices;
 - (3) Private roadways, private driveways or private infrastructure necessary to access or serve otherwise developable properties that utilize hydraulically adequate techniques that prevent blockage or constriction of natural drainage ways and authorized private stormwater discharge facilities; provided however that said private roadway, private driveway or private infrastructure shall utilize BMPs as required by the Department;
 - (4) Certain trails and appurtenances as follows:
 - (i) Hard-surface multi-use trails, associated secondary trails and appurtenances and pedestrian bridges which are listed in the City of Atlanta Comprehensive Development Plan;
 - (ii) Unpaved footpaths that are made of natural pervious materials such as wood-chips, bark, or pine straw;
 - (iii) Pervious playscapes, swings, and picnic tables that are installed in single family residential lots;
 - (5) Municipal water or wastewater facilities and City of Atlanta water, sewer, and stormwater infrastructure projects;
 - (6) Any activities conducted by the federal or state government;
 - (7) Environmental monitoring and remediation activities such as water quality monitoring, stream gauging activities, and soil and groundwater monitoring or remediation;

- (8) Buffer management and maintenance required by Section 74-316 and temporary activities approved by the City Arborist involving the removal, addition, or modification of vegetation or the removal of destroyed, dead, dying, or diseased trees;
- (9) Removal without replacement of existing impervious cover from the buffer; provided however, that such removal shall remain subject to soil stabilization and revegetation requirements (BMPs).
- (b) All exempted uses and structures shall be located as far from the stream bank as reasonably possible and best management practices shall be required.
- (c) Activities that would not otherwise be permissible without a zoning variance or rezoning shall not be exempt from this Article.

SECTION 7: That Atlanta City Code § 74-306 entitled “Stream bank variances” is hereby amended to read as follows:

Sec. 74-306. Administrative Encroachments into Stream Bank Buffers.

- (a) The Technical Panel may grant an administrative encroachment into the stream bank buffer with or without special conditions provided that the administrative encroachment shall be at least as protective of overall water quality as not granting the administrative encroachment.
- (b) General Rules.
 - (1) No administrative encroachment shall be granted that would allow for a new lot to be created that would not otherwise meet all requirements of the Code.
 - (2) No property shall be eligible for an administrative encroachment within two years of the creation and registration of a lot of record.
 - (3) No administrative encroachment shall be granted for any distance or location or any activity which is greater than necessary to alleviate a substantial hardship imposed by a strict application of this article.
 - (4) No property shall be eligible for a subsequent administrative encroachment within two years after an administrative encroachment is issued.
 - (5) No administrative encroachment shall be granted for the placement of stormwater storage or detention facilities.

- (6) No administrative encroachment shall be granted that reduces the buffer to a width less than the minimum standards established by Georgia or federal law.
- (7) Once an administrative encroachment is granted, it shall be transferable to any subsequent owner of the property as long as the encroachment proposed by the subsequent owner is the same or less than the encroachment for which the administrative encroachment was granted.
- (8) Nothing in this Article shall allow development of an area that would otherwise be prohibited under federal or state law or the Atlanta City Code.
- (9) No administrative encroachment shall be granted for the construction of a well.
- (10) No administrative encroachment shall be granted for the construction of an on-site sewage management system.

(c) Rules for Specific Types of Development.

- (1) *New Subdivisions and New Residential Lots of Record.* No lot shall be created that requires an administrative encroachment to a stream buffer to achieve the minimum total developable area required for the property's zoning classification. No administrative encroachment shall be granted to a new subdivision or new residential lot of record until at least two years after approval of a final subdivision plat or final approval of the creation of a lot of record by the City.
- (2) *New or Substantially Rebuilt Single Family Homes on Existing Lots of Record.* The Technical Panel may grant an administrative encroachment to new or substantially rebuilt single family homes on existing lots of record, only to the extent necessary to achieve the minimum total developable area required for the property's zoning district.
- (3) *Additions to Single Family Homes on Existing Lots of Record.* The Technical Panel may grant an administrative encroachment to an owner of a single family home on an existing lot of record who at the time of application, has occupied the home for at least two years with the following limitations:
 - (i) No administrative encroachment shall be granted between the stream bank and 25 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands; however, if the State of Georgia grants the applicant a variance, the Technical Panel may grant an administrative encroachment as well.

- (ii) The Technical Panel may use its discretion to grant administrative encroachments between greater than 25 feet and 50 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands, if applicable, to owners who apply for administrative encroachments to allow for additions to their home or to construct a swimming pool or spa. No administrative encroachments shall be granted in this area for tennis, basketball, other gaming courts, driveways, decks, or other appurtenances. Said administrative encroachments shall not be subject to the public notice requirements of Sections 74-310 (a), (b), and (c) and 74-312 (a) and (b) of the City of Atlanta Code of Ordinances.
- (iii) The Technical Panel may use its discretion to grant administrative encroachments between greater than 50 and 75 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands, if applicable, to owners who apply for administrative encroachments to allow for additions to their homes, to construct swimming pools, decks, tennis, basketball, or other gaming courts, or other appurtenances. Said administrative encroachments shall not be subject to the public notice requirements of Sections 74-310 (a),(b), and (c) and 74-312 (a) and (b) of the City of Atlanta Code of Ordinances.
- (4) *New Non-Single Family Development (Multi-family, Commercial, Industrial, Mixed-Use) and additions to non-single family developments on existing lots of record.* The Technical Panel may grant an administrative encroachment to an applicant that demonstrates that a substantial hardship will result if the administrative encroachment is denied. Said administrative encroachment shall be limited to areas no closer than 50 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands, if applicable.
- (5) Administrative encroachments described in subsections 74-306(c) (2), (3), and (4) may be subject to conditions requiring additional storm water management or stream buffer enhancement as described in this Article.

SECTION 8: That Atlanta City Code § 74-307 entitled “Criteria to be considered for granting a stream bank variance” is hereby amended to read as follows:

Sec. 74-307. Criteria to be considered for granting an administrative encroachment into a stream bank buffer and conditions upon granting.

- (a) The following factors shall be considered in determining whether to issue an administrative encroachment into a stream bank buffer:

- (1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
 - (2) The locations of all streams on the property, including along property boundaries;
 - (3) The location and extent of the proposed buffer encroachment;
 - (4) Whether alternative designs are possible which require less intrusion or no intrusion;
 - (5) The long-term and construction water-quality impacts of the proposed encroachment; and
 - (6) Whether issuance of the administrative encroachment is at least as protective of natural resources and the environment.
- (b) The Department shall maintain a list and specifications of landscaping BMPs that will mitigate the impacts of any approved encroachment. Approval of an administrative encroachment may be conditioned upon these standard mitigation practices as specified by the Department. Approval of an administrative encroachment may also be conditioned upon performance bonding by the Applicant.
- (c) *Buffer and/or stream crossings.*
- (1) Free span bridging techniques shall be employed to prevent blockage or constriction of natural drainage ways.
 - (2) Buffer crossings shall not add potential for up stream and down stream flooding.
 - (3) Approximately 90 degree crossing angles shall be employed.
 - (4) Construction shall be capable of surviving 100 year floods.
 - (5) Banks shall be properly stabilized.
- (d) *Drainage control.*
- (1) The crossing of, or encroachment into, the buffer shall be designed to maximize the area of the buffer where the sheet flow discharge of stormwater occurs. The sheet flow of stormwater through the entire buffer as the goal of the design.

(2) Where redirection of stormwater is necessary for drainage control, the use of vegetated swales is preferred. Piping or channelization of stormwater through buffers may be authorized by the technical panel.

(3) Topographical considerations where natural slopes do not produce drainage into the buffer or stream.

SECTION 9: That Atlanta City Code § 74-308 entitled “General procedures for stream bank variance applications” is hereby amended to read as follows:

Sec. 74-308. General application procedures for administrative encroachments to stream bank buffers.

(a) Persons seeking administrative encroachments from this article shall make application on a form supplied by the Department.

(b) General requirements for all applications.

(1) Each application shall be signed by the applicant.

(2) All site plans required by an application shall comply with the requirements of § 74-309 of Article VII, Chapter 74 of the Atlanta City Code.

(3) No application shall be processed until all material required in this article has been submitted.

(4) Any application that remains inactive for six months or more shall be deemed to be expired.

(5) Any application found to contain a misrepresentation or that fails to disclose fully all relevant facts shall be subject to denial and any administrative encroachment obtained by misrepresentation or failure to disclose fully all relevant facts shall be subject to revocation, suspension, or modification by the Technical Panel. It shall be a violation of this Code for any person to submit an application that contains a misrepresentation or that fails to disclose fully all relevant facts.

(c) When an application is deemed complete by the Department as set forth in this Article, the Technical Panel shall review it and make a determination.

(d) The Department is authorized to promulgate rules of procedure which are necessary, reasonable, and consistent with the City of Atlanta Stream Buffer Protection Ordinance, and which may assist in the administration of this Article.

SECTION 10: That Atlanta City Code § 74-309 entitled “Contents of an application for stream bank variance” is hereby amended to read as follows:

Sec. 74-309. Contents for an application for an administrative encroachment.

- (a) An application for an administrative encroachment request shall be reviewed by the Technical Panel when all of the following materials have been received:
 - (1) a site plan that includes locations and applicable state and municipal stream buffers for all state waters, streams, jurisdictional wetlands, floodplain boundaries and other natural features, as determined by a field survey;
 - (2) a site plan showing the boundaries, size, topography, slopes, soil types, vegetations and other relevant physical characteristics of the property;
 - (3) a site plan showing the locations of all existing and proposed structures, utilities, stormwater facilities, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside of the buffer. The exact area of the buffer to be impacted shall be accurately and clearly delineated, and shall include calculations of the total area and length of buffer disturbance;
 - (4) a written description of the project, including details of the buffer disturbance, and justification for why the disturbance is necessary;
 - (5) a site plan showing 100 year flood components for all streams with elevations and contour locations as they cross the property. Where 100 year flood elevations have been determined by the Federal Emergency Management Agency Flood Insurance Rate Maps or any other referenced studies deemed acceptable by the Department exist, those elevations shall be used. In areas that have not been studied by the Federal Emergency Management Agency as shown on Flood Insurance Rate Maps, the application shall include a 100 year flood study prepared in accordance with Atlanta City Code Chapter 74, Article V, and prepared by a professional engineer or geologist currently licensed in the State of Georgia.
 - (6) proposed mitigation, if any, for the buffer disturbance in accordance with procedures outlined by the Department.
- (b) The Department may require an analysis that includes alternative plans which demonstrates that no other economically feasible alternatives exist that would avoid an impact to the stream bank buffer. The Department may also require an analysis demonstrating that the impact to the stream bank buffer will be minimized and that the impact only occurs to the extent necessary to remove a substantial economic hardship. All alternative site plans must attempt to meet the same development goals as the original site plan while preventing buffer intrusion.

- (c) The Department may require other information deemed necessary to evaluate an application.

SECTION 11: That Atlanta City Code § 74-310 entitled “Advertisement, posting and mailing of notice of application” is hereby amended to read as follows:

Sec. 74-310. Public Notice of Application and Maintenance of Public Record.

- (a) Upon notification of the Department’s completion of the technical review, the applicant shall do all of the following:
 - (1) Prior to posting an official sign as required by § 74-310 (a)(2), mail via certified mail return receipt requested a notice of application for administrative encroachment to the stream bank buffer to the property owners immediately adjacent to the property for which the administrative encroachment is being requested. The applicant shall submit the signed certified mail return receipts to the Department; and
 - (2) Post in a conspicuous place an official sign supplied by the Department on the property for which the administrative encroachment is being sought so that the sign can be easily viewed from the public street on which the property fronts. The sign shall meet with following specifications:
 - (i) The sign shall contain the words “Notice of Application for Administrative Encroachment to a Stream Bank Buffer.”
 - (ii) The sign shall contain all information contained in the other notices required by this section.
 - (iii) Said sign shall remain in place for a minimum of 30 days.
 - (3) For informational purposes only, the applicant shall mail via certified mail return receipt requested a notice of application for administrative encroachment to the stream bank buffer to the president of the NPU in which the property for which the administrative encroachment is being sought is located. The applicant shall submit the signed certified mail return receipt to the Department.
- (b) The notices required by this section shall state the following information:
 - (1) the location of the proposed administrative encroachment to the stream bank buffer;
 - (2) the date of the Department’s completion of technical review;

- (3) public review of the application is available at the office of the Department of Watershed Management;
 - (4) public comment on the application may be sent to the Department; and
 - (5) such public comments must be received within 10 days of the Applicant's certification of completion of all notice requirements of § 74-310. No application for administrative encroachment may be granted without completion of the notice requirements of § 74-310.
- (c) All public comments must be timely and must identify the application to which they pertain in order to be made a part of the record to be considered by the Technical Panel.

SECTION 12: That Atlanta City Code § 74-311 entitled "Processing of stream bank variance applications" is hereby amended to read as follows:

Sec. 74-311. Processing of applications for administrative encroachments into stream bank buffers.

- (a) The Technical Panel shall issue a final determination in writing within 30 days after completion of public notice and comment period. Technical Panel may make findings of fact and conclusions of law to support its final determination.
- (b) The final determination of the Technical Panel may respond to any or all public comments, but all public comments shall be made a part of the record.
- (c) The Technical Panel's final determination may take any of the following actions on an application for an administrative encroachment:
 - (1) Issue the administrative encroachment into the stream bank buffer as requested in the application;
 - (2) Issue an administrative encroachment into the stream bank buffer with written, site-specific conditions necessary to assure conformity with the requirements and stated intent of this article; or
 - (3) Deny the application.

SECTION 13: That Atlanta City Code § 74-312 entitled "Advertisement, posting and mailing of notice of decision" is hereby amended to read as follows:

Sec. 74-312. Notice of final determination.

- (a) After a final determination is issued by the Technical Panel on an application for an administrative encroachments into a stream bank buffer the Department shall do the following:
 - (1) send a notice to the applicant and the property owners immediately adjacent to the property for which the administrative encroachment into a stream bank buffer is requested of a final determination; and
 - (2) send a notice of a final determination to the president of the NPU in which the property requesting the application is located for informational purposes.
- (b) The notices required by this section shall state: whether a final determination on the issuance of the administrative encroachment into the stream bank buffer has been made; the date of issuance; that the record is available for public review; the location of said record; and the date of the time periods and procedure for appeal of the issuance of the final determination.

SECTION 14: That Atlanta City Code § 74-313 entitled “Judicial review of decisions of commissioner on stream bank variances” is hereby amended to read as follows:

Sec. 74-313. Appeals and Judicial review of decisions of the Technical Panel on stream bank buffer administrative encroachments.

- (a) Any person who is aggrieved or adversely affected by a final determination of the Technical Panel on an administrative encroachment into a stream bank buffer may appeal said decision to the Commissioner of the Department of Watershed Management. Such appeals shall be filed within 30 days of the date of issuance of the final determination.
- (b) Any person who is aggrieved or adversely affected by a final decision of the Commissioner of the Department of Watershed Management regarding an administrative encroachment into a stream bank buffer may appeal said decision to the superior court of the county where the property for which the administrative encroachment was requested is located. Such appeals shall be filed within 30 days of the date of issuance of the final determination.
- (c) Upon review, the court shall utilize the standard of review in O.C.G.A. § 50-13-19 (h).

SECTION 15: That Atlanta City Code § 74-314 entitled “Relationships to O.C.G.A. § 12-2-8” is hereby amended to read as follows:

Sec. 74-314. Special Buffer Requirements.

- (a) *Relationship to O.C.G.A. § 12-2-8.* For any buffer which is the responsibility of the Environmental Protection Division, Department of Natural Resources, State of Georgia, hereinafter (EPD), pursuant to O.C.G.A. § 12-2-8, said buffer shall not

be exempted from state law by this article and the Technical Panel shall not grant an administrative encroachment to said stream bank buffer. In the event that an applicant is also applying to EPD for a stream bank variance under O.C.G.A. § 12-2-8, administrative encroachments to stream bank buffers from this article may be considered concurrently. Receiving a stream bank variance from EPD from the operation of O.C.G.A. § 12-2-8 is not grounds for the Technical Panel to grant a similar administrative encroachment.

- (b) *Water Supply Protection (Long Island Creek Basin).* In addition to the provisions of this Article, the requirements listed in subsections (1), (2), (3) and (4) below shall apply to property within the Long Island Creek Basin. Whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence. Subsections (b) and (c) of this section are adopted pursuant to Georgia Department of Natural Resources Rules for Environmental Planning Criteria. Streams that are a tributary to the water supply and within a 7-mile radius of a reservoir boundary shall be protected by the following criteria:
 - (1) A natural vegetative buffer shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream bank.
 - (2) No impervious surfaces shall be constructed within a 150 foot setback area measured horizontally from the stream banks on both sides of the stream.
 - (3) Septic tanks and septic tank drainfields are prohibited in the setback area of Atlanta City Code § 74-314 (b)(2) above.
- (c) New facilities within 7 miles of a water supply intake or water supply reservoir that handle hazardous materials of the types and amounts determined by the Department of Natural Resources, State of Georgia shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources, State of Georgia.
- (d) *Relationship to the Metropolitan River Protection Act.* The requirements of this Article shall not preempt any requirements of the Metropolitan River Protection Act for activities within the 2,000 foot Chattahoochee River Corridor. Further, the requirements of this Article are intended to fulfill the requirements of the Metropolitan River Protection Act, O.C.G.A. § 12-5-453, which mandate that local jurisdictions adopt regulations governing the use of all land which is in the drainage basin of any tributary flowing into the Chattahoochee River Corridor which at a minimum, include buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any tributary, in which buffer areas there will be no land-disturbing activity.

SECTION 16: That Atlanta City Code § 74-315 entitled “Nonconformities” is hereby amended to read as follows:

Sec. 74-315. Fees.

- (a) Application filing, administrative encroachment, inspection, and other fees shall be as may be established from time-to-time by the Atlanta City Council.
- (b) Application fees, if any, shall be submitted with the application and upon acceptance of said submission for review and consideration shall not be refundable. Failure to pay a required application fee shall cause the application to be returned to the applicant without acceptance for review or consideration by the City.
- (c) Application fees, if any, shall be submitted as a prerequisite to issuance of an administrative encroachment. Non-payment as a result of submission of a check having insufficient funds on account, or for any other reason, shall cause the administrative encroachment to be voided and re-issuance subject to penalty as may be established by the Atlanta City Council.

SECTION 17: That Atlanta City Code § 74-316 entitled “Buffer management and maintenance” is hereby amended to read as follows:

Sec. 74-316. Reserved.

SECTION 18: That Atlanta City Code § 74-317 entitled “Enforcement procedures” is hereby amended to read as follows:

Sec. 74-317. Enforcement procedures.

- (a) The Commissioner is authorized and empowered to enforce the requirements of this Article in accordance with the procedures of this Section.
- (b) Any enforcement activities for violations of the provisions of this Article which are also violations of Article II of Chapter 74 for land-disturbing activities shall be undertaken pursuant to the provisions of Article II of Chapter 74 of the Atlanta City Code.
- (c) Any enforcement activities for violations of the provisions of this Article which are also violations of Chapter 158 for vegetation shall be undertaken pursuant to the provisions of Chapter 158 of the Atlanta City Code.
- (d) *Stop work orders.* The Commissioner of the Department of Watershed Management, and the Commissioner of the Department of Planning and Community Development, and the Commissioners' designee(s) are each authorized to issue stop work orders to any person that violates any provision of this Article. Stop work orders are effective immediately and shall remain in effect until the necessary corrective actions or remedial measures as set forth in the notice of violation have occurred. Stop work orders may be withdrawn or modified by the Commissioner of the Department of Watershed Management or the Commissioner of the Department of Planning and Community Development

or the Commissioners' designee(s) to enable necessary remedial actions or measures to correct the violations to be taken.

- (e) *Refusal to issue certificates of occupancy or completion.* The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to refuse to issue certificates of occupancy or completion for the building or other improvements constructed or being constructed on a site until the owner or responsible person has taken the remedial actions or measures as set forth in the notice of violation or has otherwise corrected the violations described therein.
- (f) *Suspension, revocation, or modification of permit.* The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to suspend, revoke or modify a permit that was issued authorizing land disturbing activities or development. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to reinstate a suspended, revoked or modified permit after the remedial actions or measures stated in the notice of violation have been taken or the violations described therein have otherwise been corrected. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is also authorized to reinstate such permit, which may include conditions as the Commissioner of the Department of Planning and Community Development or said Commissioner's designee may deem necessary, to enable the necessary remedial actions or measures to correct the violations to take place.
- (g) *Suspension, revocation, or modification of administrative encroachment.* The Commissioner of the Department of Watershed Management or the Commissioner's designee is authorized to suspend, revoke or modify an administrative encroachment that was issued authorizing land disturbing activities or development within a stream bank buffer. The Commissioner of the Department of Watershed Management or the Commissioner's designee is authorized to reinstate a suspended, revoked or modified administrative encroachment after remedial actions or measures stated in the notice of violation have been taken or when the violations described therein are otherwise corrected. The Commissioner of the Department of Watershed Management or the Commissioner's designee is also authorized to reinstate such administrative encroachment, which may include conditions as the Commissioner of the Department of Watershed Management or the Commissioner's designee may deem necessary to enable the remedial actions or measures to correct the violations to take place.
- (h) *Bond Forfeiture.* The Commissioner of the Department of Watershed Management or the Commissioner's designee may call any bond issued under this Article, or a part thereof, to be forfeited and use the proceeds as necessary to effectuate appropriate mitigation of the disturbance of the buffer and to protect water quality.

- (j) *Cost Recovery.* In addition to any other sanctions listed in this article, a person who fails to comply with the provisions of this article may be liable to the city in civil court for any costs incurred by the city to enforce or correct violations of this article.
- (i) In addition to any other sanctions listed in this Article, all definitions of Section 1-8 of the Code shall remain applicable to this Article.
- (k) In any case in which a violation of this article has occurred, the City, in addition to other remedies provided by law, may petition for a restraining order, injunction, abatement, or take any other appropriate legal action or proceeding through a court of competent jurisdiction to prevent, restrain, or abate such unlawful use or activity.
- (l) In addition to any other sanctions listed in this Article, any person who violates this Code by conducting an unpermitted encroachment into a stream bank buffer may be required to provide mitigation in accordance with this Article, a fee in lieu of mitigation, or removal of the unpermitted encroachment in compliance with federal and state law and the Atlanta City Code.

SECTION 19: That Atlanta City Code § 74-318 entitled “Liability” is hereby amended to read as follows:

Sec. 74-318. Liability.

Neither the issuance of a development permit or compliance with this article shall relieve any person from civil liability to any person or property otherwise imposed by law, or constitute the assumption of such liability.

SECTION 20: That Atlanta City Code § 74-319 entitled “Conflict with other regulations” is hereby amended as follows:

Sec. 74-319. Conflict with other regulations.

In the event of a conflict between or among any provisions of this article, or any other laws, regulations, and policies, the requirement that is most restrictive and protective of water quality shall apply.

SECTION 21: That Atlanta City Code § 74-320 entitled “Relationship to Metropolitan River Protection Act” is hereby amended to read as follows:

Sec. 74-320. Reserved.

SECTION 22: That Atlanta City Code § 74-321 entitled “Severability” is hereby amended to read as follows:

Sec. 74-321. Severability.

Should any section, subsection, clause, or provision of this article be declared to be invalid, such decision shall not affect the validity of this article in whole or any part thereof other than the part so declared to be invalid.

SECTION 23: That Atlanta City Code is amended by adding a new § 74-322 entitled “Relationship to Subdivision Plat Approval Process” and which shall read as follows:

Sec. 74-322. Relationship to Subdivision Plat Approval Process

No final subdivision plat shall be approved by the Commissioner of the Department of Watershed Management and the Director of the Office of Planning which does not comply with all provisions of Article VII of Chapter 74 as hereby adopted.

COMMITTEE AMENDMENT FORM

Committee CLC Page Number(s) 12413

Ordinance I.D.# 06-0-0937 Section(s) § 8

Resolution I.D.# _____ Paragraph _____

Date _____

Amendment: § 24-307-

UNSTRIKE # 1 IN ITS

ENTRY

AN ORDINANCE

BY COUNCILMEMBER CLAIR MULLER

AS SUBSTITUTED BY CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 74 ENTITLED “RIPARIAN BUFFER REQUIREMENTS”; TO OFFICIALLY CHANGE THE ADMINISTERING DEPARTMENT TO WATERSHED MANAGEMENT, TO STREAMLINE THE REVIEW PROCESS AND CLARIFY THE PUBLIC NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

WHEREAS, in May 2001 the Atlanta City Council approved the Riparian Buffer Ordinance in an effort to protect water quality and fulfill the requirements of the Metropolitan River Protection Act; and

WHEREAS, in December 2001, the Atlanta City Council amended the ordinance to provide variance procedures to the stream bank buffer requirements; and

WHEREAS, in 2002 the Department of Watershed Management took over administration of the ordinance however, the ordinance still refers to the Department of Public Works as the administering agency; and

WHEREAS, based upon the last seven years of administering the Riparian Buffer Ordinance, it has become apparent that it is in the best interests of the City of Atlanta (City) to provide for a more efficient, transparent, clear, and objective variance process; and

WHEREAS, it is in the best interests of the City to provide for easily applicable definitions of streams that are consistent with State law; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the Metropolitan North Georgia Water Planning District’s (“District’s”) Model Stream Buffer Protection Ordinance (2003) or equally effective stream buffer protection ordinance; and

WHEREAS, the Metropolitan North Georgia Water Planning District Act, O.C.G.A. § 12-5-570 *et seq.* requires that the City of Atlanta adopt and administer the source water protection requirements of the District’s Watershed Protection Plan.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY ORDAINS AS FOLLOWS:

SECTION 1: That Atlanta City Code § 74-300 entitled “Citation” is hereby amended as follows:

This article may be cited as the “City of Atlanta ~~Riparian~~ Stream Buffer Protection Ordinance.”

SECTION 2: That Atlanta City Code § 74-301 entitled “Purpose and Intent” is hereby amended as follows:

Sec. 74-301. Purpose and Intent Findings and Purposes.

~~The streams and rivers of the city and the riparian areas surrounding them, if preserved in their natural state, provide numerous environmental protection and resource management benefits including~~ The City of Atlanta finds that buffers adjacent to streams provide numerous benefits including the following:

- (1) ~~Supply much of the water required by citizens for municipal and industrial uses;~~ Protecting, restoring, and maintaining the chemical, physical and biological integrity of streams and their water resources;
- (2) ~~Provide habitat for many plant and animal species that only live in riparian areas;~~ Cleansing surface water, urban stormwater runoff, and groundwater by filtering pollutants, nutrients, sediment, and other contaminants;
- (3) ~~Provide stormwater conveyance, storage, and natural drainage;~~ Reducing erosion and controlling sedimentation;
- (4) ~~Provide greenspace;~~ Protecting and stabilizing stream banks and stream channels;
- (5) ~~Improve the aesthetic appearance of stream corridors;~~ Maintaining base flow of streams by aiding in groundwater recharge thereby reducing dry weather low flows in streams;
- (6) ~~Aid in groundwater recharge which reduces dry weather low flows in streams;~~ Contributing organic matter that is a source of food, energy, and habitat for the aquatic ecosystem;
- (7) ~~Reduce flood velocities and peak flows in streams;~~ Providing tree canopy to shade streams and promote desirable aquatic habitat including but not limited to the moderation of water temperature in streams;
- (8) ~~Moderate temperature fluctuations within the riparian zone and thermal variations in the metro Atlanta area;~~ Providing and protecting riparian wildlife habitat and wildlife migration corridors;

- (9) ~~Maintain water quality and stream morphology by providing physical stability of streambanks and channels; Furnishing scenic value and education and recreational opportunity; and~~
- (10) ~~Cleanse surface and groundwater by filtering pollutants, nutrients, sediment, and other contaminants; Providing opportunities for the protection and restoration of greenspace; and~~
- (11) ~~Stabilize soils and reduce erosion; Providing an efficient, transparent, objective, and clear administrative processes.~~
- ~~(12) Remove pollutants from the air;~~
- ~~———— (13) Provide important wildlife migration corridors;~~
- ~~———— (14) Restore and maintain the chemical, physical, and biological integrity of water resources;~~
- ~~———— (15) Contribute organic matter to the stream which is a source of energy, food and habitat for the aquatic ecosystem;~~
- ~~———— (16) Provide visual and auditory screening; and~~
- ~~———— (17) Can provide educational and recreational opportunities.~~

Therefore, the Ccity finds that the protection of the streams and rivers and the ~~riparian~~ areas ~~surrounding adjacent~~ to them is vital to the health, safety and welfare of its citizens. The purpose ~~and intent~~ of this article is to protect the public health, safety and general welfare; to minimize public and private losses due to erosion, siltation and water pollution; and to maintain stream water quality by provisions designed to create buffer areas along the streams of the City for the protection of water resources and to minimize land development within such buffers by establishing buffer area requirements and by requiring authorization for any such activities; and to offer additional protection for buffer areas along the streams of the City beyond the twenty-five foot wide buffer areas mandated by the State of Georgia. ~~manage and protect riparian areas of the city by implementing requirements for the establishment, protection, and maintenance of protective buffers along riparian systems within the city to maintain the public benefits listed in (1) — (17) above.~~

This article shall apply to both public and private property within the Ccity. This article shall be administered in its entirety by the Ddepartment of ~~public works~~ Watershed Management unless otherwise specified herein.

SECTION 3: That Atlanta City Code § 74-302 entitled “Definitions” is hereby amended as follows:

Sec. 74-302. Definitions.

{The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:}

(1) *Applicant* for the purpose of this article, means the person who applies for an ~~exemption or administrative encroachment to a stream bank~~ buffer variance and who must be the owner of the real property containing the buffer or an authorized agent of the owner.

(2) *Best management practices (BMP's)* means a collection of structural practices and vegetative measures which, when properly designed, installed and maintained, will provide effective erosion and sedimentation control for all rainfall events up to and including a 25-year, 24-hour rainfall event or as otherwise defined in Atlanta City Code (Article II, Chapter 74).

(3) *Buffer*, for purposes of this article, shall mean a natural or enhanced vegetative area established by Atlanta City Code § 74-303 lying adjacent to a stream, an area of undisturbed natural vegetation with the goal of undisturbed native vegetation.

(4) *City* means City of Atlanta.

(5) *Commissioner* means the commissioner of the ~~d~~Department of public works Watershed Management or a designee.

(6) *Department* means the Department of Watershed Management or its successor agency.

(7) *Direct run-off* means water entering stream channels immediately after rainfalls or snow melts.

(8) *EPD* means the Environmental Protection Division of the State of Georgia Department of Natural Resources.

(9) *Impervious cover or Impervious surface* means any paved, hardened, or structural surface, regardless of material. Such surfaces Impervious cover or Impervious surface includes but are not limited to buildings, rooftops, driveways, streets, roads, parking lots, swimming pools, dams, tennis courts, decks, any concrete or asphalt and any other structures that meet the above definition.

~~*Intermittent stream* means a stream which contains flowing water at any time of the year which water is not directly related to a storm event.~~

(10) *Jurisdictional wetland* means a wetland area that meets the definitional requirements for wetlands as determined by the U.S. Army Corps of Engineers.

(11) *Normal stream flow* means any stream flow that consists of base flow during any period of the year under normal conditions. Base flow results from groundwater that enters the stream channel through sub-surface flow and includes spring flows into streams. Base flow does not include Direct run-off.

~~*Perennial stream* means a stream or river that flows throughout the year, except during drought.~~

(12) *On-Site Sewage Management System* shall have the same meaning as that term is defined by Georgia law and regulation and said meaning is hereby incorporated by reference as if fully set out herein.

(13) *Stream* means any watercourse that sustains normal stream flow during any period of the year under normal climatic conditions.

(14) *Stream bank* means the sloping lands that contain the stream channel and the normal flows of the stream. It is usually but not always identified as the point where the normal stream flow has wrested the vegetation.

(15) *Stream Channel* means the portion of a watercourse in a well-defined channel that contains the base flow of the stream.

(16) *Technical Panel* is a panel comprised of at least two staff professionals engineers from the ~~Department of public works~~ Watershed Management, who are designated by the ~~Commissioner~~, and certified by the Georgia Soil and Water Conservation Commission pursuant to O.C.G.A. § 12-7-19 in the field of pollution, erosion and sediment control at the designer reviewer level. The Technical Panel shall also include at least one person who holds a current and valid license to practice landscape architecture from the Georgia Board of Landscape Architects pursuant to O.C.G.A. § 43-23-1 *et seq.* and an environmental planner, designated by the ~~commissioner of the department of planning, development and neighborhood conservation~~. The Technical Panel shall hold periodic meetings and shall develop procedures for same. The Technical Panel who shall also make written recommendations final determinations and maintain the public record to the commissioner concerning the granting, granting with conditions or denying applications for exemption or variance administrative encroachments to stream bank buffers.

(17) *Waters of the state* means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation ~~or as defined by (O.C.G.A. § 12-7-3 (16),4).~~

(18) *Well* means an excavation or opening into the ground from which groundwater is sought or obtained.

(19) *Wetland delineation* means the establishment of wetland boundaries by a representative of the U.S. Army Corps of Engineers or an authority designated by the ~~e~~Corps.

(20) *Wrested vegetation* means movement of water that removes soil, debris and vegetation, creating a clear demarcation between water flow and vegetative growth.

SECTION 4: That Atlanta City Code § 74-303 entitled “Application of riparian buffers” is hereby amended as follows:

Sec. 74-303. Application of riparian stream buffers

All land development activity subject to this article shall meet the following requirements:

- (a) A natural vegetative buffer shall be maintained for seventy-five (75) feet, measured horizontally from the stream bank as measured from the point of wrested vegetation, with the requirement for expansion of the seventy-five (75) foot buffer depending on the presence of jurisdictional wetlands. If wrested vegetation is not present due to a man-made modification, removal or replacement with a structure, the buffer shall be measured from the top of the structure or point of modification or removal. *Sitting of buffers for the purpose of determining their extent.* All buffers shall abut their subject streams (or jurisdictional wetlands) and shall be measured perpendicularly and horizontally from the top of the nearest stream bank (or delineated wetland edge) outward from the stream (or jurisdictional wetlands).

- (b) *Width of required buffers.* Perennial streams shall have a 75 foot buffer (with the requirement for expansion depending on the presence of jurisdictional wetlands).

———— Intermittent streams shall have a 75 foot buffer (with the requirement for expansion depending on the presence of jurisdictional wetlands).

Waters of the state not otherwise covered by this article shall have a 25 foot buffer and their banks shall be maintained as vegetated to prevent erosion and sedimentation buffers as required by state law.

- (c) Jurisdictional wetlands, lying in part or in whole within the boundary of any required stream buffer, shall remain in their ~~undisturbed~~ natural state and shall have a seventy-five foot (725) foot buffer such that the stream buffer shall include the extent of the jurisdictional wetland plus its seventy-five foot (725) foot buffer. The applicant for a land development permit shall be responsible for providing any necessary information regarding wetland delineation.

SECTION 5: That Atlanta City Code § 74-304 entitled “Relationship to erosion and sedimentation requirements” is hereby amended as follows:

Sec. 74-304. Relationship to erosion and sedimentation requirements.

During any permitted construction activity, erosion and sedimentation control best management practices as set forth in Articles II and III of this Chapter 74 shall be implemented to prevent the migration of any sediment into a stream buffer, if such practices are not already required by other ordinances.

During any permitted construction activity, erosion and sedimentation control best management practices as set forth in Articles II and III of this Chapter 74 shall be implemented to prevent the migration of any sediment into any perennial streams, intermittent streams jurisdictional wetlands, and waters of the state.

SECTION 6: That Atlanta City Code § 74-305 entitled “Exemptions” is hereby amended as follows:

Sec. 74-305. Exemptions.

- (a) The following land uses or activities are may be exempted from the those requirements of this article by an exemption certificate which allows such uses or activities in those buffers which are in excess more protective of the buffers than required by state or federal law:— The commissioner is authorized to issue exemption certificates for such uses or activities on a showing by the applicant that no feasible alternative for the location of the use or activity exists. The commissioner may include conditions in the exemption certificate to minimize impacts on the buffer.
- (1) Construction, operation or Stream crossing by a public transportation route or public utility maintenance of a municipal or county (2) Public street or state transportation route within a City, County, or Georgia Department of Transportation right-of-way or easement, or construction, operation or maintenance of a public City of Atlanta utility within a City of Atlanta utility right-of-way or easement parallel to a stream;
 - (2) Public Municipal, county, or state roadway drainage structures, stormwater outlets, and associated best management practices;
 - (3) Private roadways, private driveways or private infrastructure necessary to access or serve otherwise developable properties that utilize hydraulically adequate techniques that prevent blockage or constriction of natural drainage ways and authorized private stormwater discharge facilities; provided however that said private roadway, private driveway or private infrastructure shall utilize BMPs as required by the Department;
 - (4) Certain trails and appurtenances as follows:
 - (i) Hard-surface (4) mMulti-use trails, and associated secondary trails and appurtenances and pedestrian bridges which are listed in the City of Atlanta Comprehensive Development Plan;

- (ii) ~~(5) Unpaved footpaths that are a maximum of four feet wide and made of natural pervious materials such as wood-chips, bark, or pine straw;~~
- (iii) Pervious playscapes, swings, and picnic tables that are installed in single family residential lots;
- (5) ~~(6) Municipal water or wastewater intakes or discharges facilities as permitted by EPD and City of Atlanta water, sewer, and stormwater infrastructure projects;~~
- (6) ~~(7) Wildlife and fisheries management Any activities conducted by the federal or state government; permitted by O.C.G.A. § 12-2-8 as amended.~~
- (7) Environmental monitoring and remediation activities such as (8)wWater quality monitoring, and stream gauging activities, and soil and groundwater monitoring or remediation;
- ~~(9) Projects under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;~~
- (8) Buffer management and maintenance required by Section 74-316 and (10)Temporary activities approved by the City Arborist involving the removal, addition, or modification of vegetation or the removal of destroyed, dead, dying, or diseased trees as approved by the city arborist.
- ~~(11) City of Atlanta water and sewer infrastructure projects.~~
- (9) Removal without replacement of existing impervious cover from the buffer; provided however, that such removal shall remain subject to soil stabilization and revegetation requirements (BMPs).
- (b) All exempted uses and structures shall be located as far from the stream bank as reasonably possible and best management practices shall be required.
- (c) Activities that would not otherwise be permissible without a zoning variance or rezoning shall not be exempt from this Article.
- ~~(e) Any entity seeking an exemption certificate shall apply to the commissioner in writing and state the basis for the exemption and provide sufficient documentation for the commissioner to determine whether such activity or use is exempted under this section and that best management practices will be followed in implementation.~~
- ~~(d) Any entity that is denied an exemption certificate may apply for a variance.~~

- ~~(e) The commissioner shall make a monthly report to the city utilities committee stating the location of all exemptions requests granted or denied during the previous month.~~

SECTION 7: That Atlanta City Code § 74-306 entitled "Stream bank variances" is hereby amended as follows:

Sec. 74-306. Stream bank variances. Administrative Encroachments into Stream Bank Buffers.

~~(a) After consultation with the technical panel, the commissioner may grant stream bank variances in the form of as specified in a development permit allowing intrusion into a riparian buffer which has been set by this article when due to special conditions, a literal enforcement of the terms of this article will result in an unnecessary hardship provided that the change in size and location of the buffers or the permitting of such activity will be at least as protective of water quality, as defined by the Clean Water Act (33 U.S.C. 1251-1387), and will be at least as protective of riparian systems in the city with regard to the factors listed in section 74-227(1)-(17) when conditions and mitigation activities associated with the exemptions or variances are considered.~~

~~(b) No stream bank variance shall be granted for any distance or location or any activity permitted which are greater than necessary to alleviate the hardship imposed by a strict application of this article.~~

~~(c) The stream bank variance shall not reduce the buffer to a width less than the minimum standards established by state or federal law.~~

~~(d) The commissioner may, but is not required, to include one or more conditions to a stream bank variance as necessary to mitigate the effect of encroaching in the required buffer. Typical conditions for mitigation of the disturbance of the buffer may include but are not limited to:~~

- ~~(1) Specified best management practices.~~
- ~~(2) Buffer or stream bank restoration.~~
- ~~(3) Soil stabilization and/or revegetation.~~
- ~~(4) Non disturbance of areas with steep slopes or other sensitive areas.~~
- ~~(5) Restrictions on cut and fill activities.~~
- ~~(6) Elevated construction techniques utilizing piers, boardwalks, or similar.~~
- ~~(7) Protection of trees and vegetative cover.~~

~~(8) Reduction of run-off over pre-construction levels.~~

~~(9) Reduction or relocation of existing impervious surface.~~

~~(10) Impervious surface limits.~~

~~(11) On or off site buffer compensation.~~

~~(12) Performance bonding.~~

~~(13) Modifications to site design.~~

~~(e) Once a stream bank variance is granted, the right to build or maintain a structure built in accordance with the stream bank variance shall be transferable to any subsequent owner of the property.~~

(a) The Technical Panel may grant an administrative encroachment into the stream bank buffer with or without special conditions provided that the administrative encroachment shall be at least as protective of overall water quality as not granting the administrative encroachment.

(b) General Rules.

(1) No administrative encroachment shall be granted that would allow for a new lot to be created that would not otherwise meet all requirements of the Code.

(2) No property shall be eligible for an administrative encroachment within two years of the creation and registration of a lot of record.

(3) No administrative encroachment shall be granted for any distance or location or any activity which is greater than necessary to alleviate a substantial hardship imposed by a strict application of this article.

(4) No property shall be eligible for a subsequent administrative encroachment within two years after an administrative encroachment is issued.

(5) No administrative encroachment shall be granted for the placement of stormwater storage or detention facilities.

(6) No administrative encroachment shall be granted that reduces the buffer to a width less than the minimum standards established by Georgia or federal law.

(7) Once an administrative encroachment is granted, it shall be transferable to any subsequent owner of the property as long as the encroachment

proposed by the subsequent owner is the same or less than the encroachment for which the administrative encroachment was granted.

(8) Nothing in this Article shall allow development of an area that would otherwise be prohibited under federal or state law or the Atlanta City Code.

(9) No administrative encroachment shall be granted for the construction of a well.

(10) No administrative encroachment shall be granted for the construction of an on-site sewage management system.

(c) Rules for Specific Types of Development.

(1) *New Subdivisions and New Residential Lots of Record.* No lot shall be created that requires an administrative encroachment to a stream buffer to achieve the minimum total developable area required for the property's zoning classification. No administrative encroachment shall be granted to a new subdivision or new residential lot of record until at least two years after approval of a final subdivision plat or final approval of the creation of a lot of record by the City.

(2) *New or Substantially Rebuilt Single Family Homes on Existing Lots of Record.* The Technical Panel may grant an administrative encroachment to new or substantially rebuilt single family homes on existing lots of record, only to the extent necessary to achieve the minimum total developable area required for the property's zoning district.

(3) *Additions to Single Family Homes on Existing Lots of Record.* The Technical Panel may grant an administrative encroachment to an owner of a single family home on an existing lot of record who at the time of application, has occupied the home for at least two years with the following limitations:

(i) No administrative encroachment shall be granted between the stream bank and 25 feet measured horizontally from the stream bank as measured from the point of wretched vegetation or jurisdictional wetlands; however, if the State of Georgia grants the applicant a variance, the Technical Panel may grant an administrative encroachment as well.

(ii) The Technical Panel may use its discretion to grant administrative encroachments between greater than 25 feet and 50 feet measured horizontally from the stream bank as measured from the point of wretched vegetation or jurisdictional wetlands, if applicable, to owners who apply for administrative encroachments to allow for

additions to their home or to construct a swimming pool or spa. No administrative encroachments shall be granted in this area for tennis, basketball, other gaming courts, driveways, decks, or other appurtenances. Said administrative encroachments shall not be subject to the public notice requirements of Sections 74-310 (a), (b), and (c) and 74-312 (a) and (b) of the City of Atlanta Code of Ordinances.

(iii) The Technical Panel may use its discretion to grant administrative encroachments between greater than 50 and 75 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands, if applicable, to owners who apply for administrative encroachments to allow for additions to their homes, to construct swimming pools, decks, tennis, basketball, or other gaming courts, or other appurtenances. Said administrative encroachments shall not be subject to the public notice requirements of Sections 74-310 (a),(b), and (c) and 74-312 (a) and (b) of the City of Atlanta Code of Ordinances.

(4) *New Non-Single Family Development (Multi-family, Commercial, Industrial, Mixed-Use) and additions to non-single family developments on existing lots of record.* The Technical Panel may grant an administrative encroachment to an applicant that demonstrates that a substantial hardship will result if the administrative encroachment is denied. Said administrative encroachment shall be limited to areas no closer than 50 feet measured horizontally from the stream bank as measured from the point of wrested vegetation or jurisdictional wetlands, if applicable.

(5) Administrative encroachments described in subsections 74-306(c) (2), (3), and (4) may be subject to conditions requiring additional storm water management or stream buffer enhancement as described in this Article.

SECTION 8: That Atlanta City Code § 74-307 entitled “Criteria to be considered for granting a stream bank variance” is hereby amended as follows:

Sec. 74-307. Criteria to be considered for granting a stream bank variance. Criteria to be considered for granting an administrative encroachment into a stream bank buffer and conditions upon granting.

~~The commissioner and the technical panel shall consider the following criteria, where applicable, when reviewing any application for an exemption or stream bank variance from the operation of this article:~~

~~(1) *Buffer and/or stream crossings.*~~

~~a. Free span bridging techniques shall be employed to prevent blockage or constriction of natural drainage ways.~~

- ~~b. Buffer crossings shall not add potential for up stream and down stream flooding.~~
- ~~c. Approximately 90 degree crossing angles shall be employed.~~
- ~~d. Construction shall be capable of surviving 100 years floods.~~
- ~~e. Banks shall be properly stabilized.~~

~~(2) *Drainage control.*~~

- ~~a. The crossing of, or encroachment into, the buffer shall be designed so maximize the area of the buffer where the sheet flow discharge of stormwater occurs. The sheet flow of stormwater through the entire buffer as the goal of the design.~~
- ~~b. Where redirection of stormwater is necessary for drainage control, the use of vegetated swales is preferred. Piping or channelization of stormwater through buffers may be authorized by the technical panel.~~
- ~~c. Topographical considerations where natural slopes do not produce drainage into the buffer or stream.~~

~~(3) *Reasonable economic use.* The commissioner shall consider whether the property to be affected by the stream bank variance has a reasonable economic use if the stream bank variance is denied.~~

~~(a) The following factors shall be considered in determining whether to issue an administrative encroachment into a stream bank buffer:~~

~~(1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;~~

~~(2) The locations of all streams on the property, including along property boundaries;~~

~~(3) The location and extent of the proposed buffer encroachment;~~

~~(4) Whether alternative designs are possible which require less intrusion or no intrusion;~~

~~(5) The long-term and construction water-quality impacts of the proposed encroachment; and~~

~~(6) Whether issuance of the administrative encroachment is at least as protective of natural resources and the environment.~~

(b) The Department shall maintain a list and specifications of landscaping BMPs that will mitigate the impacts of any approved encroachment. Approval of an administrative encroachment may be conditioned upon these standard mitigation practices as specified by the Department. Approval of an administrative encroachment may also be conditioned upon performance bonding by the Applicant.

SECTION 9: That Atlanta City Code § 74-308 entitled “General procedures for stream bank variance applications” is hereby amended as follows:

Sec. 74-308. General application procedures for administrative encroachments to stream bank buffers-variance applications.

- (a) Persons seeking ~~stream bank variance~~ administrative encroachments from this article shall make application on a form supplied by the Department, ~~commissioner~~.
- (b) General requirements for all applications.
 - (1) Each application shall be signed by the applicant ~~and shall only be accepted after the payment of any required fee including advertising/ publication costs.~~
 - (2) All site plans required by an application shall comply with the requirements of § 74-309 of Article VII, Chapter 74 of the Atlanta City Code. be prepared, signed, and sealed by an architect, engineer, or landscape architect, registered to practice in the State of Georgia. A separate site plan shall not be required for each item in an application but all required information must be provided.
 - (3) No application shall be processed until all material required in this article has been submitted.
 - (4) Any application that remains inactive for six months or more shall be deemed to be expired.
 - (5) Any application found to contain a misrepresentation or that fails to disclose fully all relevant facts shall be subject to denial and any administrative encroachment obtained by misrepresentation or failure to disclose fully all relevant facts shall be subject to revocation, suspension, or modification by the Technical Panel. It shall be a violation of this Code for any person to submit an application that contains a misrepresentation or that fails to disclose fully all relevant facts.
- (c) When an application is deemed complete by the Department as set forth in this Article, ~~the commissioner shall forward all application to the Ttechnical Ppanel for their~~ shall review it and make a determination recommendation.

- (d) ~~The commissioner~~ Department is authorized to ~~draft~~ promulgate rules of procedure which are necessary, reasonable, and consistent with the City of Atlanta Stream Buffer Protection Ordinance, and which may assist in the administration of this Article, but such rules shall not: ~~Reduce any notice requirements; shorten any period specified for public comment or appeal of a decision of the commissioner; reduce the requirements for the granting of applications.~~

SECTION 10: That Atlanta City Code § 74-309 entitled “Contents of an application for stream bank variance” is hereby amended as follows:

Sec. 74-309. Contents for an application for stream bank variance an administrative encroachment.

- (a) An application for an administrative encroachment ~~buffer stream bank variance~~ request shall be ~~forwarded~~ reviewed by ~~to~~ the Technical Panel when all of the following materials have been received:
- (1) ~~a~~ A site plan that includes locations and applicable state and municipal stream buffers for ~~of~~ all state waters, ~~intermittent streams, perennial streams,~~ jurisdictional wetlands, floodplain boundaries and other natural features, as determined by a field survey;
 - (2) ~~a~~ A site plan showing the ~~shape~~ boundaries, size, topography, slopes, soil types, vegetations and other relevant physical characteristics of the property;
 - (3) ~~a~~ A site plan showing the locations of all existing and proposed structures, utilities, stormwater facilities, impervious surfaces, and the boundaries of the area of soil disturbance, both inside and outside of the buffer. The exact area of the buffer to be impacted shall be accurately and clearly indicated ~~delineated~~, and shall include calculations of the total area and length of buffer disturbance;
 - (4) ~~a~~ A written description of the project, ~~with~~ including details of the buffer disturbance, and justification for why the disturbance is necessary;
 - (5) ~~Documentation, including financial analysis, of unusual hardship should the buffer be maintained.~~
 - (6) ~~An explanation of why the proposed development is not possible without encroachment into the buffer.~~
 - (7) ~~A calculation of the total area and length of buffer disturbance.~~
 - (8) ~~A plan for stormwater and erosion control.~~
 - (9) ~~Proposed mitigation, if any, for the buffer disturbance.~~

- (10) ~~When crossing an intermittent or perennial stream, a hydrologic study prepared, signed, and sealed by an engineer, registered to practice in the State of Georgia, shall be provided and shall specify the methods by which the construction techniques utilized to meet the requirements set forth in section 74-233(1) will avoid flooding of upstream/downstream properties.~~
- (5) a site plan showing 100 year flood components for all streams with elevations and contour locations as they cross the property. Where 100 year flood elevations have been determined by the Federal Emergency Management Agency Flood Insurance Rate Maps or any other referenced studies deemed acceptable by the Department exist, those elevations shall be used. In areas that have not been studied by the Federal Emergency Management Agency as shown on Flood Insurance Rate Maps, the application shall include a 100 year flood study prepared in accordance with Atlanta City Code Chapter 74, Article V, and prepared by a professional engineer or geologist currently licensed in the State of Georgia; and
- (6) proposed mitigation, if any, for the buffer disturbance in accordance with procedures outlined by the Department.
- (b) The ~~Department commissioner or the technical panel~~ may require an analysis that includes alternative plans which demonstrates that no other economically feasible alternatives exist that would avoid an impact to the stream bank buffer. The Department may also require an analysis demonstrating and that the impact to the stream bank buffer will be which will occur as a result of the proposed exemption or stream bank variance is minimized and that the impact only occurs to the extent necessary to remove a substantial the economic hardship. All alternative site plans must attempt to meet the same development goals as the original site plan while preventing buffer intrusion.
- (c) The ~~Department technical panel or the commissioner~~ may require that other information ~~reasonably considered- deemed~~ necessary to evaluate an application, be supplied. An applicant has 30 days from the date of request to supply the information requested to the office of the commissioner. ~~In the event that the technical panel or the commissioner requests in writing that the applicant supply additional information, the time for processing of an application shall be extended for an additional 15 days from the date of receipt of such information in the office of the commissioner. If additional information has been requested by the technical panel, the commissioner shall forward such information within three days of its receipt.~~

SECTION 11: That Atlanta City Code § 74-310 entitled “Advertisement, posting and mailing of notice of application” is hereby amended as follows:

Sec. 74-310. Advertisement, ~~P~~ublic Notice of posting and mailing of notice of Application and Maintenance of Public Record.

- (a) ~~Within five days after~~ Upon notification of the Department's completion of the technical review, a completed application is sent to the technical panel, the commissioner shall cause a notice of the application for stream bank variance to be: the applicant shall do all of the following:
- ~~(1) Published in the legal organ of the City of Atlanta;~~
 - ~~(2)~~
 - (1) Prior to posting an official sign as required by § 74-310 (a)(2), mail via certified mail return receipt requested a notice of application for administrative encroachment to the stream bank buffer to the property owners immediately adjacent to the property for which the administrative encroachment is being requested. The applicant shall submit the signed certified mail return receipts to the Department; and
 - (2) Post in a conspicuous place an official sign supplied by the Department on the property for which the administrative encroachment is being sought ~~(2) Posted on the property so that the sign can be easily viewed from the public street on which the property fronts. The sign shall meet with following specifications; as set forth herein;~~
 - ~~(i) The (a) A sign shall contain not less than six square feet with the words "Notice of Application for Administrative Encroachment to a Riparian Buffer Stream Bank Buffer Variance" in letters not less than four inches high in a conspicuous place on the affected property so that the sign can be easily viewed from the public street on which the property fronts.~~
 - ~~(ii) In addition, Tthe sign shall contain all information contained in the other notices required by this section.~~
 - ~~(iii) Said sign shall be posted within five days after a completed application is sent to the technical panel and shall not remain in place be removed for a minimum of 3020 days.~~
 - ~~(3) Mailed to the property owners immediately adjacent to the property for which the stream bank variance is requested;~~
 - (3) For informational purposes only, the applicant shall mail via certified mail return receipt requested a notice of application for administrative encroachment to the stream bank buffer ~~(4) Sent to the president of the NPU in which the property for which the administrative encroachment is being sought requesting the application is located.~~

The applicant shall submit the signed certified mail return receipt to the Department.

- (b) The notices required by this section shall state the following information:
- (1) The location of the proposed administrative encroachment to the stream bank buffer variance;
 - (2) the date of the Department's completion of technical review;
 - (3) that public review of the application is available at the office of the Department of Watershed Management commissioner and may be mailed to the NPU upon request;
 - (4) shall state that public comment on the application may be sent to the office of the commissioner Department; and
 - (5) that such public comments must be received within 1045 days of the Applicant's certification of completion of all notice requirements of § 74-310, date of publication. No application for administrative encroachment may be granted without completion of the notice requirements of § 74-310.
- (c) ~~All public comments must be received within 20 days of the date that a completed application is sent to the technical panel. All public comments must be timely and must identify the application to which they pertain in order to be made a part of the record to be considered by the Ttechnical Ppanel.~~

SECTION 12: That Atlanta City Code § 74-311 entitled "Processing of stream bank variance applications" is hereby amended as follows:

Sec. 74-311. Processing of applications for administrative encroachments into stream bank variance application buffers.

- (a) ~~Recommendations of the technical panel shall be made to the commissioner within 15 days of the time an application is received unless additional information is requested, in which case, recommendation shall be made 15 days after the receipt of the additional information by the technical panel.~~
- (b) ~~The recommendations of the Ttechnical Ppanel shall be issue a final determination in writing within 30 days after completion of public notice and comment period, and shall include a specific finding on each of the main criteria for allowing a stream bank variance. The recommendation of the Ttechnical Ppanel may but is not required to make a separate findings of fact and conclusions of law on each of the sub items contained in each of the main criteria to support its final determination.~~

- (be) The ~~final determination recommendation~~ of the ~~Technical Panel~~ may ~~but is not required to respond to any or all public comments, but all public comments shall be made a part of the record. presented to the commissioner.~~
- (cd) The ~~Technical Panel's final determination may recommend and the commissioner may take any of the following actions on an application for an administrative encroachment; stream bank variance:~~
- (1) Issue the administrative encroachment into the stream bank buffer variance as requested in the application;
 - (2) Issue an administrative encroachment into the stream bank buffer variance with written, site-specific conditions necessary to assure conformity with the requirements and stated intent of this article; or
 - (3) Deny the application.
- (e) ~~The commissioner shall issue a decision in writing within 15 days of the date of the decision of the technical panel unless the commissioner deems it necessary to request additional information from the applicant, in which case, the decision of the commissioner may be deferred pending receipt of such additional information. If additional information has been requested from the applicant, the commissioner shall have 15 days from receipt of the additional information to issue a decision.~~
- (f) ~~If the commissioner has not: (1) Issued a development permit; (2) Requested additional information in writing; (3) Issued a development permit with conditions; or (4) Issued a denial in writing stating the grounds for denial, within 15 days after receipt of a recommendation from the technical panel or the receipt of additional requested information from the applicant, the recommendation of the technical panel shall become the decision of the commissioner.~~
- (g) ~~The commissioner shall make a monthly report to the city utilities committee stating the location of all stream bank variance applications and stating all decisions on the issuance or denial of any application since the prior report.~~

SECTION 13: That Atlanta City Code § 74-312 entitled "Advertisement, posting and mailing of notice of decision" is hereby amended as follows:

Sec. 74-312. Advertisement, posting and mailing of Nnotice of decision final determination.

- (a) ~~Within five days a~~After a final determination is issued by the Technical Panel a final decision on an application for an administrative encroachments into a stream bank buffer the Department shall do the following: variance, the commissioner shall cause a notice of the decision to be:
- (1) Published in the legal organ of the City of Atlanta;

- (2) ~~Posted on the property as set forth herein;~~
- a. ~~A sign not less than six square feet with the words "Notice of Decision on Riparian Buffer Stream Bank Variance" in letters not less than four inches high in a conspicuous place on the effected property so that the sign can be easily viewed from the public street on which the property fronts. In addition, the sign shall contain all information contained in the other notices required by this section. Said sign shall be posted within five days after a decision and shall not be removed for 25 days.~~
- (3) ~~Mailed to the property owners immediately adjacent to the property for which the stream bank variance is requested; send a notice to the applicant and the property owners immediately adjacent to the property for which the administrative encroachment into a stream bank buffer is requested of a final determination; and~~
- (24) ~~Sent to the president of the NPU in which the property requesting the application is located. send a notice of a final determination to the president of the NPU in which the property requesting the application is located for informational purposes.~~
- (b) The notices required by this section shall state: ~~The whether a final determination decision on the issuance of the administrative encroachment into the stream bank buffer has been made variance; the date of issuance; that public review the record is available for public review; the location of said record at the office of the commissioner; and shall state that any appeal of the decision must be made within 30 days of the date of the time periods and procedure for appeal of the issuance of the final determination, decision.~~
- (c) ~~That the public works commissioner shall develop a monthly report of all stream bank variance applications received, and the decision made on all stream bank variance applications, shall be mailed monthly to all NPU chairpersons citywide.~~

SECTION 14: That Atlanta City Code § 74-313 entitled "Judicial review of decisions of commissioner on stream bank variances" is hereby amended as follows:

Sec. 74-313. Appeals and Judicial review of decisions of the Technical Panel
commissioner on stream bank buffer administrative encroachments variances.

- (a) Any person who is dissatisfied aggrieved or adversely affected by a ~~with a final determination decision of the Technical Panel commissioner on an administrative encroachment into a stream bank buffer variance has the right to may~~ appeal said decision to the Commissioner of the Department of Watershed Management. Such appeals shall be filed within 30 days of the date of issuance of the final determination.
- (b) Any person who is aggrieved or adversely affected by a final decision of the Commissioner of the Department of Watershed Management regarding an

administrative encroachment into a stream bank buffer may appeal said decision to the superior court of the county where the property for which the administrative encroachment was requested is located. Such appeals shall be filed within 30 days of the date of issuance publication of the final determination of the decision of the commissioner.

- (c) Upon review, the court shall utilize the standard of review in O.C.G.A. § 50-13-19 (h).

SECTION 15: That Atlanta City Code § 74-314 entitled “Relationships to O.C.G.A. § 12-2-8” is hereby amended as follows:

Sec. 74-314. Relationship to O.C.G.A. § 12-2-8 Special Buffer Requirements.

- (a) Relationship to O.C.G.A. § 12-2-8. ~~The commissioner is not authorized to issue exemptions or grant stream bank variances for any buffer which is the responsibility of Georgia the Environmental Protection Division, Department of Natural Resources, State of Georgia, hereinafter (“EPD”), pursuant to O.C.G.A. § 12-2-8, said buffer shall not be exempted from state law by this article and the Technical Panel shall not grant an administrative encroachment to said stream bank buffer.~~ In the event that an applicant is also applying to EPD for a stream bank variance under O.C.G.A. § 12-2-8, ~~exemptions or administrative encroachments to stream bank buffers variances~~ from this article may be considered concurrently. Receiving a stream bank variance from EPD from the operation of O.C.G.A. § 12-2-8 is not grounds for the ~~commissioner~~ Technical Panel to grant a similar ~~exemption or variance administrative encroachment if~~ such exemption or stream bank variance does not meet the intent of this article.
- (b) Water Supply Protection (Long Island Creek Basin). In addition to the provisions of this Article, the requirements listed in subsections (1), (2), (3) and (4) below shall apply to property within the Long Island Creek Basin. Whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall take precedence. Subsections (b) and (c) of this section are adopted pursuant to Georgia Department of Natural Resources Rules for Environmental Planning Criteria. Streams that are a tributary to the water supply and within a 7-mile radius of a reservoir boundary shall be protected by the following criteria:
- (1) A natural vegetative buffer shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream bank.
 - (2) No impervious surfaces shall be constructed within a 150 foot setback area measured horizontally from the stream banks on both sides of the stream.
 - (3) Septic tanks and septic tank drainfields are prohibited in the setback area of Atlanta City Code § 74-314 (b)(2) above.

- (c) New facilities within 7 miles of a water supply intake or water supply reservoir that handle hazardous materials of the types and amounts determined by the Department of Natural Resources, State of Georgia shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the Department of Natural Resources, State of Georgia.
- (d) *Relationship to the Metropolitan River Protection Act.* The requirements of this Article shall not preempt any requirements of the Metropolitan River Protection Act for activities within the 2,000 foot Chattahoochee River Corridor. Further, the requirements of this Article are intended to fulfill the requirements of the Metropolitan River Protection Act, O.C.G.A. § 12-5-453, which mandate that local jurisdictions adopt regulations governing the use of all land which is in the drainage basin of any tributary flowing into the Chattahoochee River Corridor which at a minimum, include buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any tributary, in which buffer areas there will be no land-disturbing activity.

SECTION 16: That Atlanta City Code § 74-315 entitled “Nonconformities” is hereby amended as follows:

Sec. 74-315. Nonconformities Fees.

- (a) Application filing, administrative encroachment, inspection, and other fees shall be as may be established from time-to-time by the Atlanta City Council.
- (b) Application fees, if any, shall be submitted with the application and upon acceptance of said submission for review and consideration shall not be refundable. Failure to pay a required application fee shall cause the application to be returned to the applicant without acceptance for review or consideration by the City.
- (c) Application fees, if any, shall be submitted as a prerequisite to issuance of an administrative encroachment. Non-payment as a result of submission of a check having insufficient funds on account, or for any other reason, shall cause the administrative encroachment to be voided and re-issuance subject to penalty as may be established by the Atlanta City Council.

~~Structures, or impervious surfaces, existing as of the date of the adoption of this article [Dec. 11, 2001] shall be legally nonconforming unless the structure or impervious surface is horizontally expanded to occupy greater land area inside the buffer, or is moved in whole or in part to any other portion of the buffer. Any replacement or reconstruction activity within the buffer shall occur within the original footprint or shall require compliance with the provisions of this article. No development permit is required by this article for normal repairs, restoration, and renovation performed upon existing structures and impervious surfaces which are legally nonconforming as of the date of the adoption of this article.~~

SECTION 17: That Atlanta City Code § 74-316 entitled “Buffer management and maintenance” is hereby amended as follows:

Sec. 74-316. Buffer management and maintenance Reserved.

~~The owner shall inspect the buffers periodically for evidence of degradation in regard to the purposes listed in section 74-227(1) (17) and compliance with all other provisions of this article. Examples of degradation may include but are not limited to the following: Soil erosion within the buffer; stream bank erosion; and blockage of streams. Corrective actions may be required by the city and shall be taken by the owner in a manner to ensure compliance with the terms of this article.~~

SECTION 18: That Atlanta City Code § 74-317 entitled “Enforcement procedures” is hereby amended as follows:

Sec. 74-317. Enforcement procedures.

- (a) The Commissioner is authorized and empowered to enforce the requirements of this Article in accordance with the procedures of this Section.
- (b) Any enforcement activities for violations of the provisions of this Article which are also violations of Article II and III of Chapter 74 for land-disturbing activities shall be undertaken pursuant to the provisions of Article II and III of Chapter 74 of the Atlanta City Code.
- (c) Any enforcement activities for violations of the provisions of this Article which are also violations of Chapter 158 for vegetation shall be undertaken pursuant to the provisions of Chapter 158 of the Atlanta City Code.
- (d) Stop work orders. The Commissioner of the Department of Watershed Management, and the Commissioner of the Department of Planning and Community Development, and the Commissioners' designee(s) are each authorized to issue stop work orders to any person that violates any provision of this Article. Stop work orders are effective immediately and shall remain in effect until the necessary corrective actions or remedial measures as set forth in the notice of violation have occurred. Stop work orders may be withdrawn or modified by the Commissioner of the Department of Watershed Management or the Commissioner of the Department of Planning and Community Development or the Commissioners' designee(s) to enable necessary remedial actions or measures to correct the violations to be taken. ~~If the commissioner finds that any person with an exemption or stream bank variance has violated a provision of this article or a condition of their development permit not involving land disturbing activities [article II and III of chapter 74] or vegetation [chapter 158], the commissioner is authorized to issue stop work orders to cease the activity. Such notice shall be in writing and shall be given to the owner of the property or the permit applicant or the person or persons in charge of the activity on the property and shall state the conditions under which the work may be resumed.~~

- (e) Refusal to issue certificates of occupancy or completion. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to refuse to issue certificates of occupancy or completion for the building or other improvements constructed or being constructed on a site until the owner or responsible person has taken the remedial actions or measures as set forth in the notice of violation or has otherwise corrected the violations described therein.
- (fe) ~~The commissioner is authorized to find that when a person has failed to comply with an approved plan for activities permitted under this article or any conditions contained in a development permit issued under this article that it is necessary to issue a written notice to comply with the plan or conditions and shall state the time within which such measures must be completed. If the person engaged in the activities permitted under this article shall fail to comply within the time specified, the person shall be deemed to be in violation of this article and in addition to other penalties shall be subject to suspension or revocation of any permit issued and may call any bond issued under this article, or a part thereof, to be forfeited and use the proceeds as necessary to effectuate appropriate mitigation of the disturbance of the buffer and to protect water quality.~~ Suspension, revocation, or modification of permit. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to suspend, revoke or modify a permit that was issued authorizing land disturbing activities or development. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is authorized to reinstate a suspended, revoked or modified permit after the remedial actions or measures stated in the notice of violation have been taken or the violations described therein have otherwise been corrected. The Commissioner of the Department of Planning and Community Development or said Commissioner's designee is also authorized to reinstate such permit, which may include conditions as the Commissioner of the Department of Planning and Community Development or said Commissioner's designee may deem necessary, to enable the necessary remedial actions or measures to correct the violations to take place.
- (g) Suspension, revocation, or modification of administrative encroachment. The Commissioner of the Department of Watershed Management or the Commissioner's designee is authorized to suspend, revoke or modify an administrative encroachment that was issued authorizing land disturbing activities or development within a stream bank buffer. The Commissioner of the Department of Watershed Management or the Commissioner's designee is authorized to reinstate a suspended, revoked or modified administrative encroachment after remedial actions or measures stated in the notice of violation have been taken or when the violations described therein are otherwise corrected. The Commissioner of the Department of Watershed Management or the Commissioner's designee is also authorized to reinstate such administrative encroachment, which may include conditions as the Commissioner of the Department of Watershed Management or the Commissioner's designee may

deem necessary to enable the remedial actions or measures to correct the violations to take place.

- (h) Bond Forfeiture. The Commissioner of the Department of Watershed Management or the Commissioner's designee may call any bond issued under this Article, or a part thereof, to be forfeited and use the proceeds as necessary to effectuate appropriate mitigation of the disturbance of the buffer and to protect water quality.

~~(f) In addition to any other sanctions listed in this article, all definitions of section 1-8 of the Code shall remain applicable to this article.~~

- (jg) Cost Recovery. In addition to any other sanctions listed in this article, a person who fails to comply with the provisions of this article may be liable to the city in civil court for any costs incurred by the city to enforce or correct violations of this article.

- (i) In addition to any other sanctions listed in this Article, all definitions of Section 1-8 of the Code shall remain applicable to this Article.

- (k) In any case in which a violation of this article has occurred, the City, in addition to other remedies provided by law, may petition for a restraining order, injunction, abatement, or take any other appropriate legal action or proceeding through a court of competent jurisdiction to prevent, restrain, or abate such unlawful use or activity.

- (l) In addition to any other sanctions listed in this Article, any person who violates this Code by conducting an unpermitted encroachment into a stream bank buffer may be required to provide mitigation in accordance with this Article, a fee in lieu of mitigation, or removal of the unpermitted encroachment in compliance with federal and state law and the Atlanta City Code.

SECTION 19: That Atlanta City Code § 74-318 entitled “Liability” is hereby amended as follows:

Sec. 74-318. Liability.

Neither the issuance of a development permit or compliance with this article shall relieve any person from civil liability to any person or property otherwise imposed by law, or constitute the assumption of such liability.

SECTION 20: That Atlanta City Code § 74-319 entitled “Conflict with other regulations” is hereby amended as follows:

Sec. 74-319. Conflict with other regulations.

In the event of a conflict between or among any provisions of this article, or any other laws, regulations, and policies, the requirement that is most restrictive and protective of water quality shall apply.

SECTION 21: That Atlanta City Code § 74-320 entitled “Relationship to Metropolitan River Protection Act” is hereby amended as follows:

Sec. 74-320. Relationship to Metropolitan River Protection Act Reserved.

~~The requirements of this Article shall not preempt any requirements of the Metropolitan River Protection Act for activities within the 2,000 foot Chattahoochee River Corridor. Further, the requirements of this Article are intended to fulfill the requirements of the Metropolitan River Protection Act, O.C.G.A. § 12-5-453, which mandate that local jurisdictions adopt regulations governing the use of all land which is in the drainage basin of any tributary flowing into the Chattahoochee River Corridor which at a minimum, include buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any tributary, in which buffer areas there will be no land disturbing activity.~~

SECTION 22: That Atlanta City Code § 74-321 entitled “Severability” is hereby amended as follows:

Sec. 74-321. Severability.

Should any section, subsection, clause, or provision of this article be declared to be invalid, such decision shall not affect the validity of this article in whole or any part thereof other than the part so declared to be invalid.

SECTION 23: That Atlanta City Code is amended by adding a new § 74-322 entitled “Relationship to Subdivision Plat Approval Process” and which shall read as follows:

Sec. 74-322. Relationship to Subdivision Plat Approval Process

No final subdivision plat shall be approved by the Commissioner of the Department of Watershed Management and the Director of the Office of Planning which does not comply with all provisions of Article VII of Chapter 74 as hereby adopted.

Secs. 74-323--74-400. Reserved.

AN ORDINANCE BY COUNCIL MEMBER CLAIR MULLER

AN ORDINANCE TO AMEND ARTICLE VII OF CHAPTER 74 ENTITLED "RIPARIAN BUFFER REQUIREMENTS"; TO OFFICIALLY CHANGE THE ADMINISTARTING DEPARTMENT TO WATERSHED MANAGEMENT, TO STREAMLINE THE REVIEW PROCESS AND CLARIFY THE PUBLIC NOTICE REQUIREMENTS; AND FOR OTHER PURPOSES.

WHEREAS, in May 2001 the City of Atlanta Council approved the Riparian Buffer Ordinance in an effort to protect water quality and fulfill the requirements of the Metropolitan River Protection Action, and for other purposes; and

WHEREAS, in December 2001, the ordinance was amended to provide stream bank variance procedures to the stream bank buffer requirements and to broaden the purpose of such requirements beyond erosion and sediment control; and

WHEREAS, despite amendments to the ordinance Chapter 74 still refers to the Department of Public Works as the administrating entity even though the ordinance is administered by the Department of Watershed Management; and

WHEREAS, the number of building permit applications continues to increase which in turn increases the number of stream buffer variance applications making it more imperative to streamline and clarify the variance application process; and

WHEREAS, with continued growth in the City of Atlanta the need to protect streams and similar bodies of water is as important as it ever has been therefore variance applications need careful and strict professional scrutiny; and

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1. That all references to *Public Works* be changed to read *Watershed Management*.

SECTION 2. Define "hardship" as an unreasonable economic burden that renders property completely unuable?

SECTION 3. That within Section 74-302. *Definitions, Technical Panel* is amended to read as follow:

Technical panel is a panel comprised of two staff engineers from the Department of Watershed Management who combined have expertise in erosion control and stormwater management and a landscape architect who are designated by the commissioner, and an environmental planner, designated by the commissioner of planning, development and neighborhood conservation, and two law representatives who combined have expertise and training in environmental law and zoning, designated by the city attorney.

SECTION 4. *Amend Section 74-306. to make it more protective?*

SECTION 5. *Amend Section 74-308. General procedures for stream bank variance applications (d) to read as follows:*

(d) The commissioner is authorized to draft rules of procedure which may assist in the administration of this article but such rules shall not: Reduce any notice requirements; shorten any period specified for public comment or appeal of a decision of the commissioner; reduce the requirements for the granting of applications; and shall be made available to the public upon request.

SECTION 6. *Amend Section 74-310. Advertisement, posting and mailing of notice of application. to read as follows:*

Section 74-310. Posting and mailing of notice of application.

(a) Within five (5) days after a completed application is accepted by the technical panel, the applicant shall cause the application for a stream bank variance to be:

(1) Posted on the property as set forth herein;

(a) A sign not less than six-square feet with the words "Notice of Application for Riparian Buffer Stream Bank Variance" in bold letters not less than four-inches high in a conspicuous place on the effected property so that the sign can be easily viewed from the public street on which the property fronts. In addition, the sign shall contain all information contained in the other notices required by this section. Said sign shall be posted within five (5) days after a completed application is accepted by the technical panel, shall state such date of acceptance and shall not be removed for 20 days from the posting date.

(2) Mailed to the property owners immediately adjacent to the property for which the stream bank variance is requested.

(b) The notices required by this section shall state: The location of the stream bank variance; that public review of the application is available at the office of the commissioner and may be mailed to the NPU upon request for purposes of notification only; shall state that

public comment on the application may be sent to the office of the commissioner and will include the address of said office.

- (c) All public comments must be received within 20 days of the date that a completed application is accepted by the technical panel which is posted on notice of application for variance. All public comments must be timely and must identify the application to which they pertain in order to be made a part of the record to be considered by the technical panel.*

SECTION 7. Amend Section 74-312. Advertisement, posting and mailing of notice of decision. shall be changed to read as follows:

Section 74-312. Posting and mailing of notice of decision.

- (a) Within five (5) days after a final decision on an application for stream bank variance, the applicant shall cause a notice of the decision to be*

1. Posted on the property as set forth herein:

a. A sign not less than six-square feet with the words in bold "Notice of Decision on Riparian Buffer Stream Bank Variance" in a conspicuous place on the effected property so that the sign can be easily viewed from the public street on which the property fronts. In addition, the sign shall contain all information contained in the other notices required by this section. Said sign shall be posted within five (5) days after a decision, the date of which must be stated on said sign. The notice of decision shall not be removed for 25 days.

2. Mailed to the property owners immediately adjacent to the property for which the stream bank variance is requested;

3. Sent to the president of the NPU in which the property requesting the application is located for notification purposes only.

- (b) The notices required by this section shall state: The decision on the issuance the stream bank variance; that public review of the record is available at the office of the commissioner; shall state that any appeal of the decision must be made within 30 days of the date of decision which is posted on the notice of decision.*

SECTION 8. Amend Section 74-313. *Judicial review of decisions of commissioner on stream bank variances* to read as follows:

Any person who is dissatisfied with a final decision of the commissioner on the stream bank variance has the right to appeal said decision to the superior court of the county where the property is located. Such appeals shall be filed within 30 days of the date of decision of the commissioner or technical panel posted on the notice of decision.

SECTION 9. That all ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed.